

Medical Association meeting in St. Louis last May, the fine community meeting in October in Pittsburgh during the American Public Health Association meeting, and the Conference of Executives at national headquarters a little later. The Association's staff in the course of such meetings and general field work visited every state in the Union.

So we wind up this first year of the Association's second quarter-century with prospects bright for the Fourth National Social Hygiene Day, February 1 next, and a rousing and important conference at Chicago, described in the *Monthly Social Hygiene News*, as further great steps in the 940 advance of the eight-point program, and the onward sweep to wipe out syphilis and gonorrhea.

This indeed is a satisfactory review and a promising outlook. But there is one respect in which activity and achievement are not coming up to plans and specifications. This, as you would guess, concerns the securing of sufficient funds to meet the ever-growing demands upon the Association. Although members and contributors have increased in number some 800 per cent in the last two years, the per capita amount of gifts steadily declines. If we are to "hold that line," we must change this situation, and I call on you to help in this way as you have in so many others.

May we count on you for 1940? . . .

Faithfully yours,

RAY LYMAN WILBUR.

**Subject: Appropriation for the Army Medical Library in District of Columbia.**

**Comment:** The Army Medical Library at Washington, D. C., has long been in need of better quarters. The subject has been discussed, off and on, in *CALIFORNIA AND WESTERN MEDICINE* and other medical journals.

In the appropriation bill before the present Congress, the item has been included in this year's budget.

The Appropriations Committee of the House of Representatives has as members two California congressmen: Hon. Albert E. Carter of Oakland and Hon. Harry R. Sheppard of Yucaipa, in San Bernardino County.

Members of the California Medical Association who wish to promote the interests of scientific medicine in the United States may well write to these two congressmen and to other California representatives and senators urging support of this appropriation.

Below is appended the copy of a letter, in which additional information is given:

(COPY)

San Francisco, January 15, 1940.

The Honorable Harry R. Sheppard,  
Congressman, Nineteenth California District,  
Washington, D. C.

Dear Congressman Sheppard:

We have been informed that you are a member of the House Committee on Appropriations, before which committee, the item of the acquisition of the site of a new building for the Army Medical Library as submitted by President Roosevelt, will come up for consideration.

We are writing to express the hope that you may be able to give active support to bring about the enactment of this appropriation in which members of the medical profession are greatly interested.

We enclose a copy of an editorial from our *OFFICIAL JOURNAL* of March, 1937, in which the Army Medical Library is discussed. We hope you will have the time to scan this so that you may better understand why the medical profession is so wholeheartedly in favor of better facilities for the Army Medical Library.

I know that Past President William W. Roblee of Riverside, and other officers of your congressional district, will have special appreciation for any good efforts you may use to secure this appropriation.

With all good wishes, and hoping to have your continued coöperation,

Very truly yours,

GEORGE H. KRESS, M. D.,  
Secretary.

## MEDICAL JURISPRUDENCE†

By HARTLEY F. PEART, Esq.  
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### Charitable Hospitals Are No Longer Exempt From Liability for Injuries to Patients Caused by Negligence of Hospital Employees

Two recent decisions of the California Supreme Court have brought about a change in the liability of charitable hospitals for injuries to patients. Heretofore, these hospitals enjoyed an exemption from liability which private hospitals operated for profit did not enjoy. The exemption was based on long established policy and was upheld by the courts on three different theories of nonliability. The most generally stated theory was the so-called trust fund doctrine first announced in England in the early nineteenth century. According to this view the patron deals with the charity upon the condition that the trust assets are not available to him for the payment of damages.

Another theory upon which the rule of nonliability has been based is that by implied contract one who accepts the services or care of a corporation organized and operated for charitable purposes waives his right to hold it liable for tort.

Other courts have flatly stated that such an organization can not be held liable for tort upon the ground of public policy.

These three principles of exemption, it should be stated, have only been applied in favor of patients. Employees and strangers have for many years been allowed full recovery.

The first of the two recent decisions is *Silva vs. Providence Hospital of Oakland*, 99 Cal. Dec. 20. Here, there was presented squarely for decision the question: Is a charitable corporation liable for an injury negligently inflicted by an employee acting within the scope of his employment? The facts of the case were as follows: While the plaintiff was a patient in the hospital and paying the amounts charged by it for the services rendered to her, she fell and fractured her hip by reason of the negligence of the hospital nurse in failing to equip her bed with a side board. The hospital conceded the sufficiency of the evidence to support the findings on the issue of negligence but challenged the findings upon the ground that as a result of defendant's charitable nature, it should be exempt from liability. The evidence disclosed that since 1903, when it was incorporated under the laws of California, the hospital has been a nonprofit corporation. The object and purpose of the corporation is to erect and maintain one or more hospitals to provide medical and surgical care for sick and disabled persons; it has no capital stock; its members and officers derive no pecuniary profit from the operation of the hospital and serve without pay; poor and needy persons are admitted to the hospital without distinction of class or creed and charity patients are afforded the same treatment as patients who pay for services rendered. The hospital is owned by the Sisters of Charity of Montreal, Quebec. After acquiring land, the sisterhood erected a hospital with money borrowed from the Roman Catholic Archbishop of San Francisco and thereafter solely from the earnings of the hospital they paid off this indebtedness, acquired a new site and erected a second hospital.

In 1936, the year of plaintiff's injury, the hospital's income from patients was sufficient to meet all of its operating expenses, taxes and interest and to pay \$11,000 on its indebtedness. Six per cent of the patients were cared for as a matter of charity, 30 per cent paid the charges of the hospital in part, and the balance (64 per cent) paid their

†Editor's Note.—This department of *CALIFORNIA AND WESTERN MEDICINE*, presenting copy submitted by Hartley F. Peart, Esq., will contain excerpts from the syllabi of recent decisions, and analyses of legal points and procedures of interest to the profession.

bills in full. So far as plaintiff was informed, the hospital did not agree to furnish any care or treatment at less than the regular rate.

In holding the hospital liable for injuries to Mrs. Silva, the Supreme Court stated that many charitable hospitals of today are of a somewhat different nature than the charitable hospitals of the past. Today, although many hospitals receive some financial assistance from charitable gifts, the court thought it unquestionably true that by accepting some patients who pay full rates and by setting aside reserves for expansion, their nature is no longer strictly charitable but merely nonprofit. Because of this fact the court held that each of the three theories of nonliability have become inapplicable. The court in adopting an excerpt from an opinion rendered in another case stated:

It would seem that a sound social policy ought, in fact, to require such organizations to make just compensation for harm legally caused by their activities under the same circumstances as individuals before they carry on their charitable activities. The policy of the law requiring individuals to be just before generous seems equally applicable to charitable corporations. To require an injured individual to forego compensation for harm when he is otherwise entitled thereto, because the injury was committed by the servants of a charity, is to require him to make an unreasonable contribution to the charity, against his will, and a rule of law imposing such burdens cannot be regarded as socially desirable nor consistent with sound policy.

One justice dissented and in his dissenting opinion stated that he could not agree with the prevailing opinion for two reasons. In the first place, he challenged the test for exemption from liability based on the ability of the patient to pay. A poor man is just as much entitled to good treatment at a hospital as a rich one and is just as much in need of it. In the second place, he thought that the reasoning and conclusions of the prevailing opinion are contrary to the declared policy of this state and the overwhelming weight of authority elsewhere. It was his opinion that less than eight states have held that charitable institutions are liable for the negligence of their employees on the same basis as private profit making corporations. He stated:

... the true test is the general nature of the institution and whether it is maintained for the purpose of profit or for that of service, and not the extent or cost of the benefit which the patient or beneficiary has received by availing himself of its privileges.

The other decision affecting charitable hospitals was announced contemporaneously with the *Silva* decision and is entitled *England vs. Hospital of the Good Samaritan*, 99 Cal. Dec. 38.

In this case a patient in the hospital was burned by hot water bottles which a nurse placed against his body. The case thus involved the same point of law that was involved in the *Silva* case and the same conclusion was reached.

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*New Drug to Aid Treatment of Syphilis Is Announced.* A warning of the menace to the individual and to the public health that exists in self-treatment of syphilis is sounded by *The Journal of the American Medical Association* in commenting on an announcement in the same issue of *The Journal* of the acceptance by the Association's Council on Pharmacy and Chemistry of a new drug, sobisminol mass, which can be taken by mouth as part of the treatment for syphilis, and sobisminol solution, for injection in treating the disease.

Heretofore the standard method used by most physicians in the treatment of the disease has been the alternating injection into the vein of arsenical compounds based on the famed discovery of Ehrlich, and injections into the muscles of the hip of bismuth compounds. The new drug is not a substitute for this treatment, but must be taken in conjunction with the injection of one of the arsenical compounds.

*The Journal* points out that with the standard method of treating syphilis "the disease is under constant attack

by the respective metallic compounds. Physicians who use the injection technique may be assured that the patient has received the prescribed dose. The routine weekly schedule facilitates the observation of the effect of the treatment on the disease and on the patient. Regularity of examination and treatment is important to both the patient and the physician. It affords frequent opportunity for mental and moral influence, and encouragement by the physician. It aids in the maintenance of adequate records, which are useful in statistical evaluation of various treatment systems. Perhaps most important to the individual and to society, routine administration of medication provides the physician with an effective means of insuring the prolonged cooperation of the patient—an essential requirement for the successful termination or control of the disease. Any plan of treatment which lacks these advantages requires serious consideration from a public health and socio-economic point of view before it is accepted as a suitable method for the treatment of syphilis. . . .

"There are, of course, certain instances in which the giving of a drug by mouth would be a valuable adjunct in syphilis treatment. It can be used with caution for those individuals whose business or profession necessitates occasional absences from the physician's supervision. It should prove useful for persons who have unusual difficulty in taking injections into the muscle because of resultant pain and hardening of the muscles.

"Sobisminol mass must not be sold over the counter as a cure for syphilis. If it were thus marketed, the product would be a real danger and detriment to the public health. Both its discoverer, Paul J. Hanzlik of Stanford University Medical School, and the manufacturers are most anxious that no such contingency shall arise. Therefore, according to agreements between the board of trustees of Stanford University and each of the three firms already licensed to manufacture the product, every legal effort is being made to prevent the sale of capsules of sobisminol mass to the public other than on or by the prescription of the physician.

"The ultimate evaluation of the therapeutic efficacy of a new drug such as sobisminol mass necessarily requires a long time. The close cooperation of Doctor Hanzlik and other investigators, the manufacturers, the Food and Drug Administration and the Council on Pharmacy and Chemistry in careful studies designed to evaluate and control this new product properly is highly commendable.

"Supplying the drug directly to the public would obviously result in inadequate treatment of unrecorded and uncontrolled cases and thus would become a serious menace both to the individual and to the public health."

In the same issue of *The Journal* are the reports of two groups of physicians who have made a study of the results of treating syphilis with sobisminol mass.

Both groups report encouraging results. Willard M. Meininger, M.D., and Charles W. Barnett, M.D., San Francisco, in their report state that: "It is a valuable addition to antisyphilitic treatment and certainly deserves further trials."

Julius R. Scholtz, M.D., Katherine D. McEachern, M.D., and Clyde Woods, M.D., Los Angeles, state that their work with the drug "does not allow us to say that sobisminol mass taken by mouth can be substituted for other forms of bismuth in the routine treatment of early syphilis. All circumstantial evidence points to the fact that sobisminol mass taken by mouth will do whatever any other bismuth preparation will do." They warn, however, that "the ultimate proof lies in a treated series of cases observed for several years" and conclude their paper with the statement that:

"If bismuth treatment by mouth receives approval, great care must be exercised in the control of its distribution. Self-treatment with syphilis is worse than no treatment."